

REPORT
OF THE
DEBT COMMISSION,

Q 342

ON

THE APPLICATION FOR REVIEW OF JUDGMENT

IN THE CASE OF

MAGANMAL OF THE FIRM OF AMARSI SUJANMAL—APPLICANT,

VERSUS

H. H. THE NIZAM'S GOVERNMENT.

TOGETHER WITH

the orders of the Government thereon.



HYDERABAD-DECCAN

A. VENKOBAPPAUL PILLAI & SONS.—PRINTERS

1900

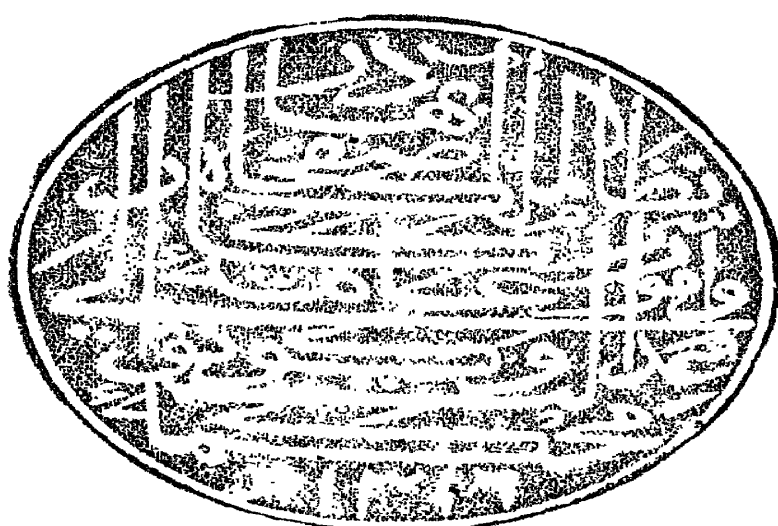
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Translation.

*Letter from the Financial Secretary to His Excellency the Minister, No. 1325
dated the 30th Rabi-us-sani 1317 Hijri, i.e., the 1st Aban 1308 Fasli.*

FROM,

NAWAB IMAD JUNG BAHADUR,

Officiating Financial Secretary.

TO,

BAKHSI RAGHUNATH PRASAD, Esq.

Secretary, Debt Commission.

SUBJECT.

Application by Maganmal of the firm of Amarsi Sujanmal regarding four cases which have been dismissed.

In reply to your letter No. 236, dated the 15th Sharivar 1308 Fasli, on the subject above noted, I have the honor to say that the decision of the Debt Commission rejecting the application for review of judgment has been upheld by His Excellency the Minister, and the Sowkar may be informed accordingly.

(Sd.) C. WILLMOTT,

Assistant Financial Secretary.

DECISION
OF THE
DEBT COMMISSION.

Dated the 21st Amardad 1308 Fasli.

IN THE CASE OF
MAGANMAL OF THE FIRM OF AMARSI SUJANMAL,
APPLICANT FOR REVIEW,

versus

HIS HIGHNESS THE NIZAM'S GOVERNMENT.

Claim :

Rupees 23,24,712-7-6.

1. This case came on for hearing today, in the presence of Syed Furrokh Husain, Mukhtar of the applicant for review, who was heard in support of his application. The Report of the Sub-Committee of the Debt Commission, with the accompanying statements, was submitted (to Government) with the proceedings of the General Committee of the Debt Commission, dated the 3rd Azar 1298 Fasli. The first of these statements showed the cases, which, in the Sub-Committee's opinion, had been filed in Shah Sawar Jung's office during the time of the first Sir Salar Jung. The second contained those cases which had been filed before the Debt Commission during the Administration of the second Sir Salar Jung. The Sub-Committee entered only two claims of the Plaintiffs in the first statement, and six in the second statement; and of the latter, Nos 1 and 3 were those which had been included in the first statement. Regarding claims Nos. 2, 4, 5 and 6, the Sub-Committee observed as follows in the column of remarks of the second statement.—

“The accounts only in respect of claims Nos 1 and 3 appear to have been submitted in Shah Sawar Jung's time. It seems that the Government frequently pressed this Sowkar to furnish his accounts and he was warned to submit them expeditiously, in default of which, he was informed the balance against him would be recovered. Notwithstanding these urgent demands, however, which commenced at the latest in 1294 Hijri and had probably been made for some years previously, he did not submit the accounts until 1298 Hijri. We have referred above to the accounts which he at length submitted in that year.”

2. On the submission of the proceedings of the General Committee of the Debt Commission, together with the papers above alluded to, His Excellency the Minister was pleased to issue orders on the subject in Government Resolu-

tion, Home Department (Judicial) No. $\frac{2}{13}$, dated 4th Rabi-us-sani 1309 Hijri, corresponding with the 1st Dai 1301 Fasli.

3. Para 12 of the Resolution in question deals with the claims which were proved not to have been submitted in the time of the first Sir Salar Jung, and regarding which His Excellency the Minister observed as follows:—

“It is incomprehensible why, if these claims were valid and good, they were not preferred during the long period of the said Minister (First Sir Salar Jung’s) administration, which extended over 30 years, especially when similar claims were being preferred.”

With the sanction of His Highness, an order was at the same time passed for the dismissal of such claims, in the following terms:—

“His Excellency the Minister has therefore decided, with regard to these claims, that His Highness’ Government see no reason to treat them with any special indulgence. The claimants are at liberty, if they choose to do so on their own responsibility, to seek redress in the competent Courts of Law, subject to the requirements of the Laws of Limitation and Court fees and other Rules in force for the time being.”

The paragraph in question then gives a list of the claims so dismissed, which contains under No. 16 four claims of the present applicant for review, of the aggregate value of Rupees 23,24,712-7-6.

4. The applicant submitted a petition to the Debt Commission on the 19th Dai 1308 Fasli, praying for a review of that order. He pleads that the Commission had made a mistake in arriving at the opinion that he had not put forward his four claims during the time of the first Sir Salar Jung, and states that, as this decision was clearly wrong, he submitted a petition to the Home Secretary, Nawab Fateh Nawaz Jung Bahadur, on the 15th Bahman 1301 Fasli, on which an order was endorsed to the effect that the petition should be presented to the Debt Commission. He has accordingly laid the endorsed petition before the Commission and prays that the evident mistake committed in his case may be rectified.

5. The issues to be disposed of in the present case are two, namely:—

(1)-Whether such an application for review, submitted after the lapse of seven years, can be lawfully and equitably taken into consideration.

(2)-If so, whether there are sufficient grounds for a review of judgment.

As regards the first issue, we must see what the law on the subject is. Civil Circular No 2 of 1302 Hijri provides in section 517 that “if an application for review is made after the lapse of 90 days, the applicant should state the reasons why he could not present it within the period of 90 days.” The Limita-

tion Act of 1300 Fasli, known as Kanun-i-Mahboobyah, in Article 4, Schedule C, provides a period of 90 days for the submission of applications for review of judgment "from the date of a decree or order." Section 10 of the same Act provides that "an application not presented within the time specified by law shall be rejected, unless the applicant can satisfactorily show that he could not present it within such specified time for some sufficient cause." The law thus requires that an application for review made after the lapse of 90 days, shall state reasons for its non-submission within the prescribed period. As the present application however does not specify any such grounds, it could be thrown out on that ground, if the provision on the subject be construed as strictly as it would be in a Court of law. But the Commission did not deem it expedient to enforce the law with such strictness, and gave an opportunity to the applicant to state his grounds for the delay. The explanation given by the Mukhtar for the applicant to the effect that the Commission did not sit for some time, and that the applicant had gone to Northern India, seems to us to be entirely frivolous. The Commission held sittings from time to time up to the end of Sharivar 1305 Fasli, and though they were not so regular before that date as they have been since, several meetings took place every year. It was, moreover, not necessary that an application should be presented only at a sitting of the Commission. The office of the Commission was in existence, and there was a President and a Secretary, to any one of whom the applicant could have easily presented his application if he chose. Since the month of Sharivar 1305 Fasli, however, the Commission has regularly assembled, and the Secretary has sat two days in every week, and more frequently in case of necessity. At these sittings, the Secretary not only receives applications, but makes preliminary inquiries into cases and gets them ready for being placed before the Commission, a fact which was well known to the applicant, as he had appeared before the Secretary for about a year in connection with the Government claim against him for a sum of about Rupees 2,93,000 which had been before the Commission. He had not only filed several applications in that case, but it had been inquired into and prepared for submission to the Commission in his presence. Taking these facts into consideration, the plea that the Commission did not sit cannot be accepted as valid, nor can any importance be attached to the other reason advanced, that the applicant had gone away to Northern India.

6. It has been argued, on behalf of the applicant, that the function of the Commission is simply to bring about an amicable settlement on reasonable grounds, and that the law of limitation therefore does not apply to its procedure. We cannot however admit this plea. It is not the duty of this Commission alone to be guided by justice and fair play, but the Courts of law also are governed by the same principles, and the aim and object of all laws and regulations is to secure the administration of justice in an easy and expeditious manner so that the public may be put to no unnecessary inconvenience. The law of limitation itself is based on the principle of public convenience and facility. If such restrictions as those imposed by that and other laws were not in force, no case would ever come to an end, and litigation would go on for ever, causing

great inconvenience and hardship to the public. In the present case, the application for review is made after a lapse of seven years, and if it be admitted now, there would be no reason why a similar application a century hence, by a representative of the present applicant, should not be allowed, if it was based on grounds similar to those now advanced. But irrespective of this consideration, even common sense would suggest that the applicant's silence for seven years after four of his cases had been thrown out, showed that he acquiesced in the justice and reasonableness of the decision which he now wishes to have reviewed. The only inference which, in our opinion, can be drawn from the plaintiff's conduct is that his case is very weak, and that he has adopted the present course purely as a matter of speculation. As he has assigned no sufficient reasons for the delay of seven years in presenting the present application, it deserves no notice, and we are of opinion that it should be dismissed on this legal ground.

7. As the first issue has been decided against the applicant, it is hardly necessary for us to express our opinion regarding the second issue. But as the plaintiff seeks redress against the Government, and as the Commission is not a judicial tribunal but is composed of Government officials, whose duty it is to advise the Government in respect of claims for money due by or to the State, we have thought it desirable to satisfy ourselves (although the applicant cannot of right ask us to do so) whether the Commission committed any such mistake as is alleged by the applicant, so that, if we are satisfied that an error has been committed, we may recommend the Government to order, as a matter of justice, a retrial of the cases that have been thrown out. We have accordingly, of our own motion, gone through the papers and files on the subject, and are of opinion that there is no justification for the applicant's plea that the Commission was wrong in holding that the cases under consideration were not brought forward in the time of the first Sir Salar Jung. The procedure then in vogue was different from that now followed. A claimant did not put in a separate statement of each of his claims in detail, as is done now, but submitted a consolidated account of all his claims. This was audited in the office of Shah Sawar Jung, and after it was examined and compared with the State accounts and records, a settlement was effected by the Minister. Proceedings were first taken in 1284 Hijri for the settlement of claims originating in the times of the Prime Ministers preceeding the first Sir Salar Jung. Prior to that year, the Sowkars, who claimed any outstandings against the Government on account of transactions relating to the period above referred to, used to receive monthly instalments on account of such outstandings. One of such Sowkars was the predecessor of the present applicant. A notice was served on all of these claimants requiring them to submit their accounts, and the applicant's firm was amongst the persons to whom the notice in question was issued. The applicant's father, Kesari-chand, not having complied with the requisition, his monthly payment was stopped in 1285 Hijri. But up till 1294 Hijri, that is to say, for ten years after the commencement of the proceedings above alluded to, the applicant's predecessor took no action. Meanwhile it appeared from the accounts of certain

other claimants that the applicant's firm had received some payments from the Government Treasury, as co-partners with the said claimants, and that it had thus received an amount in excess of its proper share. Under the circumstances and as no one on behalf of the firm had for a long time submitted the accounts called for under the notice above mentioned, peremptory orders were issued to Regchand, brother of the applicant and manager of the firm at the time, to produce the firm's accounts within a week, in default of which, it was intimated that action would be taken to recover from the firm the excess amount paid to it. From that time till 1298 Hijri, that is to say, for a period of four years, repeated reminders were sent to Regchand both from Shah Sawar Jung's office and the Accountant General's Department, but delays were made and evasive answers given on the part of the firm. When at length stringent measures were adopted, Maganmal, the present applicant, who had succeeded Regchand after the latter's death, as manager of the firm, submitted in 1298 Hijri some accounts, known as accounts relating to claims Nos. 1 and 3. No accounts, however, connected with claims Nos. 2, 4, 5, and 6 were produced, and under these circumstances the Sub-Committee of the Debt Commission was right in holding that no accounts except those connected with the two claims above referred to, had been submitted during the Administration of the first Sir Salar Jung.

8. The Mukhtar for the applicant has drawn the attention of the Commission to an abstract statement which was filed in Shah Sawar Jung's office together with the accounts referring to claims Nos. 1 and 3. This statement gives the total amount of the claims now under consideration, and from this fact it is contended on behalf of the applicant that he had submitted these claims during the time of the first Sir Salar Jung. But this argument cannot hold water. The first Sir Salar Jung had clearly ordered that all Sowkars should be required to submit the accounts connected with each and every one of their claims. The effect of this order was that, if any person failed to produce his accounts, he should be regarded as having no claim against the Government. As the applicant's firm did not put in any accounts for ten years after the office for the settlement of old debts was established, the same presumption would have been made in his case and his name would have been struck off the list of creditors having claims against the State. But as it happened that the firm's accounts had to be compared with those submitted by other Sowkars, and as it was further believed that the firm had received more money from the Government than was rightly due to it, the production of its accounts was insisted upon. Even then, after the lapse of 14 years, the only accounts filed were those connected with the two claims already alluded to, and though during the next four years constant demands were made for the submission of the accounts relating to the other claims, the orders were not complied with. Under these circumstances the applicant can now make no capital out of the fact that he had, in the time of the first Sir Salar Jung, represented that he had other claims against the Government besides those for which accounts had been, as admitted by the Commission, duly filed. The applicant ought to have put in his accounts according to the

rules in force at the time, in which case they would have been admitted as filed at that period. He having, however, not adopted that course, we are not prepared to hold that he had submitted the accounts in connection with the four claims above referred to during the Prime Ministership of the first Sir Salar Jung. Even when, in the time of the second Sir Salar Jung, a notice was served on all the creditors of the State to file their claims afresh before the Commission, the applicant failed to submit any accounts connected with these four cases and confined himself to the accounts of the two claims he had already filed previously in the office of Shah Sawar Jung. Taking, therefore, the whole course of his conduct as regards these claims into consideration, we are of opinion that his application for review should be rejected, and we do not think it necessary to call for any reply from the Government representative in the matter. We recommend that His Excellency the Minister may be pleased to sanction the rejection of the application.

9. We attach, as Appendices to this report, copies of some of the papers on the files bearing on the cases under consideration, on which we have based our opinion given above.

(Sd.) IMAD JUNG,
OFFICIATING FINANCIAL SECRETARY,
Member.

(Sd.) ASIF NAWAZ WANT,
ACCOUNTANT GENERAL,
Member.

(Sd.) RAGHUNATH PRASAD,
JUDGE, HIGH COURT,
Member and Secretary.

APPENDICES.

Appendix I.

From file No. 1 of 1284 Hijri in the office of Shah Saur Jung Bahadur.

List of names of Sowkars to whom outstandings are due in respect of transactions up to the time of the late Siraj-ul-Mulk, and who have, during the tenure of office of the present Minister, received, and are receiving, payments from the Treasury.

Payments in liquidation of the amounts due discontinued, but accounts to be prepared and submitted to the Daftar-i-Mal according to the orders.

Fateh Chand Girdhari Lal.

Nathmal Gobardhan Das.

Narayan Das Trimbak Das.

Now discontinued.

Set off against monthly payments.

Mahanandram Puranmal, Sowkar.

Amarsi Sujanmal, Sowkar.

Kangir, Sheolal, Kirparam, &c.

Kishen Ram Mohan Lal.

Hari Das Bhagwan Das.

Suratram Gobindram.

Kanchangir Gosain.

Sadagir Gosain.

Umraogir Manohargir Gosaian.

Mahant Jogundargir.

Thirathgir Gosain.

Jumna Das Balkishen Das.

Account to be prepared and submitted to the Daftar.

Appendix II.

From file No. 1 of 1294 Hijri in the office of Shah Sawar Jung Bahadur.

Letter to the address of the Accountant-General.

By order of the Government, a report as to the non-attendance of Sowkars in spite of repeated summonses, and the necessity for the submission of their accounts, is herewith forwarded, and it is requested that strict instructions may be issued by your Department to the said Sowkars to attend this office at an early date, with their accounts showing the balances that may be due. If, contrary to this, the Sowkars in question do not submit their accounts, the payments to be made to them from the Treasury should be stopped, and intimation thereof given for the information of the Government. Dated 6th Jamadi-ul-Avval 1294 Hijri.

(Sd.) SHAH SAWAR JUNG.

Appendix III.

From file No. 1 of 1294 Hijri in the office of Shah Suwar Jung Bahadur.

The Sowkars mentioned in the following list do not submit their accounts of outstandings or send their Gumashtas who may be acquainted with the accounts, although frequently called upon to do so. Dated 3rd Jamadi-ul-Avval 1294 Hijri. (appended with letter to the Accountant General, dated 6th Jamadi-ul-Avval 1294 Hijri.)

6

Sheolal Motital.

Regchand of the firm of Amarsi Sujanmal.

Representative of Mahant Somwargir.

Representative of Sadagir.

Ranjitgir Balwantgir.

Ganpatgir Illachigir.

Appendix IV.

Memorandum, dated Zikad 1294 Hijri, in file No. 1 of 1294 Hijri in the office of Shah Sawar Jung Bahadur.

To,

Regchand of the firm of Amarsi Sujanmal Sowkar.

The balance-sheet of your firm's account not having been received, although your clerk took away a form of the account, and although strict instructions had been issued to you by the Accountant-General's office for the submission of the account through a well acquainted Gumashta, you are informed that the disposal of the accounts of other Sowkars has been hitherto delayed in consequence of the non-receipt of your accounts, and that these Sowkars are complaining about it. It is necessary, therefore, that you should file your account as above mentioned within a week from the receipt of this memo. In default of this, such steps as may be desirable will be taken, with the sanction of Government, for the realization of the balance due from the firm, without waiting for the said account. It should be noted that, if any representation is made afterwards in this matter on your behalf to the Government, no attention will be paid to it. Dated the 18th Zikad 1294 Hijri.

(Sd) SHAH SAWAR JUNG.

Appendix V.

From file No. 1 of 1294 Hijri in the office of Shah Sawar Jung Bahadur.

To,

The Superintendent of Payments connected with His Highness' Palace.

With reference to your letter bearing no number, dated the 18th Zikad of the current year, regarding the submission of the Government accounts to your office through a well acquainted Gumashta, I beg to say that my Gumashta named Ghansham Das is being sent to your office, according to your orders, with the accounts. Please go over the accounts and favour the person above mentioned with a copy thereof. Dated 26th Zihejja 1294 Hijri.

(Sd. in Marwari character) REGCHAND,

of the firm of

SETT AMARSI SUJANMAL SOWKAR.

Appendix VI.

From file No. 1 of 1294 Hijri in the office of Shah Sawar Jung Bahadur.

Letter to the address of Regchand of the firm of Amarsi Sujanmal, Sowkar.

Whereas you have a joint account with several Sowkars, and the inquiry into these several claims is delayed in consequence of the non-submission of the said account, and the Government has issued orders that suitable measures should be adopted in this matter and the cause of the non-production of the account reported, I write to point out that, although you have been asked and urgently required to send a well acquainted Gumashta with the necessary account to this office, and although you have received strict injunctions in this matter from the office of the Accountant-General, you have not filed the account notwithstanding that a considerable time has elapsed. This is very undesirable and cannot be regarded as any thing else but an obstruction of the work of the Government. You must consider what the result will be of your not obeying the orders of Government in spite of several letters having been addressed to you. You are again asked to send a Gumashta with detailed accounts, as is usually done by others. In the event of your not complying with this, suitable steps will be taken.

2. Copy forwarded to the office of the Accountant-General for information, and with the view that instructions may be issued once more to the Sowkar in question, and that, in the event of the account not being submitted by him, the disbursement of amounts payable to him from the Treasury may be stopped, as well as the payment of all sums in execution of the decrees of any Court, after giving intimation of the fact to the Secretary, Judicial and Police Department, and submitting a representation to the Government through the Accountant-General's own Department. Dated the 24th Rabi-us-sani 1296 Hijri.

(Sd.) SHAH SAWAR JUNG.

Appendix VII.

From file No. 1 of 1294 Hijri in the office of Shah Sawar Jung Bahadur.

No. 103.

For the information of the office of the Accountant-General His Highness the Nizam's Government.

With reference to your office letter No. 1034 dated the 30th Rabi-us-sani of the current year, regarding the receipt of copy of a letter from Nawab Shah Sawar Jung Bahadur to my address on the subject of the non-production of the Government accounts in his office, etc., I beg to say that the Nawab's letter on the subject has been received (by us) also. Sett Regchandji has, with the permission of the Government, gone to Amba Jogai for marriage and will shortly return. After his arrival, he will act in accordance with the letter above referred to. But until the said Sett's return, the matter may be kindly postponed. Copy forwarded to the Nawab for information in reply to his letter. Dated 3rd Jamadi-ul-avval 1296 Hijri.

(Sd. in Marwari character) GHANSHAM DAS,

GUMASHTA, in the absence of REGCHANDJI SETT

gone for marriage.

Appendix VIII.

*No. 118. From file No. 1 of 1294 Hijri in the Office of Shah
Sawar Jung Bahadur.*

For the information of the Superintendent of Payments connected with His Highness' Palace.

In accordance with your orders regarding the Government accounts, I have appointed my Gumashta Ghansham Das to appear in your office. He is accordingly preparing the accounts from the Bahi-khata. I therefore beg to say that he will present himself in your office after the accounts are ready. I communicate this for your information. Dated the 19th Jamadi-us-sani 1296 Hijri.

(Sd. in Marwari character) REGCHAND,
of the firm of AMARSI SUJANMAL, *Sowkar*.

Appendix IX.

Memo. from the firm of Amarsi Sujanmal, Sowkar, in file No. 1 of 1298 Hijri of the Office of Shah Sawar Jung Bahadur, dated the 7th Rajab 1298 Hijri.

To

The Superintendent of Payments connected with His Highness' Palace.

With reference to your order requiring the presence of the Gumashta of this firm in your office for the purpose of the inspection of accounts, &c., I beg respectfully to say that I now send to your office, in accordance with your order, Dhondi Rao, a clerk, and Sheonarayen, a Gumashta, of this firm with the accounts. They will daily appear and fully explain all matters connected with the accounts regarding which they may be questioned.

(Signed in Marwari character) MAGANMAL.

Appendix X.

Letter No. 54, dated the 4th Jamadi-ul-avval 1300 Hijri, i. e., 6th Ardi'bihishth 1292 Fasli, from the office for the Settlement of Sowkars' claims, contained in file No. 1 of 1298 Hijri in the office of Shah Sawar Jung Bahadur.

For the information of Kesarichand Magaunal of the firm of Amarsi Sujanmal, Sowkar.

With reference to your memo. No. 1, dated the 7th Safar of the current year, regarding the appointment of Sham Rao, a clerk of yours, for the purpose of submitting the accounts of your firm with a view to their settlement, I write to inform you that neither has the clerk appeared in this office nor have any accounts been submitted by him. Under these circumstances, how can the statements be prepared and a settlement of the amount claimed be effected? It is therefore necessary that you should have a clerk or Gumashta of your firm, well acquainted with the accounts, to be present till the statement is got ready, that the remaining accounts should be submitted to this office at once, and an assurance given that there is no other amount due under any other bond or account, &c., except that under the accounts submitted to this office. If, even after this, a delay is made in carrying out the instructions herein contained, no further application for the payment of any amount due to you will be entertained.

(Signed) VAHID MUNAVVAR KHAN.

Appendix XI.

Memo from Sett Kesarichand Regchand and Maganmal of the firm of Amarsi Sujanmal Sowkar. No. 2 dated 10th Safar 1302 Hijri.

From file No. 1 of 1294 Hijri in the office of Shah Suwar Jung Bahadur.

For the information of the office for the settlement of Sowkars' claims.

In reply to your letter No. 4 dated the 4th instant asking for final and complete accounts of this firm etc., I beg to say that as I had been to Ajmere for a change in consequence of ill-health, there was a delay in the submission of the complete accounts of the firm. The accounts will now be completed and filed within two months without any demur. Let me inform you that as the accounts, when finished, will show a large sum due to me, it is my aim and object to use the utmost despatch in the matter.

(Sd. in Marwari character) MAGANMAL,

